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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 368.

THE SUSQUEHANNA POWER COMPANY,
APPELLANT,

vs.

STATE TAX COMMISSION OF MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

MOTION OF APPELLEE TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

WM. P. LANE, JR.,
Attorney General of the State of Maryland,

WM. L. MARBURY, JR.,
Assistant Attorney General of the State of Maryland,

TYDINGS, LEVY & ARCHER,
CHARLES H. MACNABB,
Counsel for Appellee.

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MOTION OF APPELLEE TO DISMISS OR AFFIRM.

Comes now the appellee in the above entitled cause, by its counsel of record, and moves that the appeal herein be dismissed or that the judgment of the Court of Appeals of Maryland be affirmed for the reason that the questions on which the decision in this case depends were not presented to and considered by the Courts below, do not present any substantial federal question, and are so unsubstantial as not to need further argument.

WM. P. LANE, JR.,
Attorney General of the State of Maryland,

WM. L. MARBURY, JR.,
Assistant Attorney General of the State of Maryland,

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CHARLES H. MACNABB,
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APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

BRIEF IN SUPPORT OF MOTION TO DISMISS, OR AFFIRM.

A.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals of Maryland was rendered on June 12th, 1930, and has not yet been officially reported. It is printed in the record (r. 324-345) and may be found in 151 Atl. 29.

B.

JURISDICTION.

The jurisdiction of this Court is sought to be rested upon 28 U. S. C., Section 344 (a), which is cited in full in the appellant's "Statement As To Jurisdiction On Appeal."

C.

STATEMENT OF THE CASE.

The appellant, acting pursuant to the powers conferred by its Charter (Laws of Maryland, 1908, ch. 268),

proceeded to acquire the entire bed of the Susquehanna River from tidewater to the Maryland-Pennsylvania State line. Some of this property was acquired by purchase, but at least one-half thereof was acquired by a single patent covering 2,012 acres of the bed of the river. That patent was obtained by the appellant from the State of Maryland on December 28th, 1923, upon the express representation (required by Section 48, Article 54 of the Code of Public General Laws, Bagby's Edition 1924), *that the river was not navigable* (r. 48-49). In 1926 the appellant applied for and obtained from the Federal Power Commission, created by the Federal Water Power Act (16 U. S. C., ch. 12), a license to erect a dam and power plant across the Susquehanna River about five miles above tidewater (r. 288). The appellant also applied for and obtained the approval of the Public Service Commissions of Maryland and Pennsylvania for its project (r. 287). Thereafter construction of the dam was commenced and practically completed prior to September, 1928.

Upon completion of this dam, the waters were backed up for a distance of fourteen miles, covering many acres of what had theretofore been fast land, on which there had been erected many structures of great value. Thus all of the property which had theretofore belonged to the Tidewater Canal Company extending along the west side of the Susquehanna River from the town of Wrightsville in Pennsylvania to Havre de Grace, in Maryland, was completely submerged, as was also the town of Conowingo. The dam is nearly a mile long, more than 100 feet in height, and when the plant is completed will, according to the appellants' witness, be *the largest power*

plant in the world (r. 98). This dam alone makes any talk of navigation of the Susquehanna River utterly futile.

On October 10th, 1929, the State Tax Commission of Maryland entered an order assessing the real estate and structures erected thereon of the appellant in Harford County, Maryland, consisting of a dam, equipment, and adjacent lands, at the sum of $12,023,633. Included in that assessment was the following item (r. 5): "2,110 acres (more or less) submerged land—$2,349,300."

On November 7th, 1929, the appellant, acting pursuant to Art. 81, Secs. 253 and 259 of the Code of Public General Laws of Maryland (Bagby's Ed. 1924), filed a petition in the Circuit Court for Harford County claiming "that such assessment of said 'submerged lands' or land forming part of the bed of said Susquehanna River, and flowage rights therein at said figure is illegal and erroneous" (r. 2), and praying that "the action of the State Tax Commission in so valuing and assessing said rights therein may be reversed and set aside" (r. 4). On November 29th, 1929, the Circuit Court for Harford County entered an order affirming the action of the State Tax Commission from which order an appeal was taken to the Court of Appeals of Maryland (r. 317). That court affirmed the judgment below, accompanying its action with an opinion delivered by Offutt, J., which contains in itself proof of the entire unsubstantiality of the present appeal (r. 324-345).

The assignments of error (r. 222-223), which are reiterated by the appellant in its "Statement of the Points to be Relied Upon" (r. 443-446), assert that the assessment which the Court of Appeals refused to disturb is

repugnant to the Constitution of the United States, (a) in that it deprives the appellant of property without due process of law contrary to the provisions of the 14th Amendment, and (b) in that it imposes a direct tax upon a federal instrumentality.

Due process was claimed to have been denied on the basis, (1) that the valuation of the "submerged lands" included a value attributable to the waters of the Susquehanna River flowing over said land; (2) that the valuation included a value attributable to a license obtained from the Federal Power Commission pursuant to the Federal Water Power Act, 16 U. S. C., c. 12; and (3) that the assessment of the appellant's real property was arrived at by a different method and upon a higher value than other property owned by other taxpayers on the same tax roll or located in the same taxing district (r. 222-223). The claim that the State is imposing a direct tax upon a federal instrumentality rests upon the contention that the Susquehanna River is a navigable stream, and that the appellant's project is subject to all of the provisions of the Federal Water Power Act, 16 U. S. C., ch. 12.

ARGUMENT.

SUMMARY.

I. The record does not show that the assessment upon the appellant's real property includes values attributable to the waters of the Susquehanna River or to a federal franchise; nor that the appellant's real property was assessed by a different method or upon a higher value than other similar properties owned by other taxpayers on the tax roll or located in the same taxing district; nor that the Susquehanna River is navigable.

II. Except for the claim of immunity as a federal instrumentality, the claims asserted in the assignments of error were not presented to or passed upon by the lower court.

III. The claim that the assessment is invalid in that it includes values attributable to the waters of the Susquehanna River and to a federal license, and the claim that the assessment is invalid for inequality are each equally unsubstantial.

IV. The claim of the appellant to immunity from taxation as a federal agency is wholly unsubstantial.

I.

The contentions made in the assignment of errors present no question for the consideration of this court for the reason that they are based upon assumptions of fact not supported by the record. All of the contentions involving the 14th Amendment are based upon the fundamental assumption that the assessment was excessive by reason of some erroneous method of valuation adopted by the State Tax Commission. But this assumption is not borne out by the record, as plainly appears from the following passage from the opinion of the Court of Appeals (r. 344):

> "But there is nothing in this case to permit the inference that the appellant was injured by the action of the Commission in valuing its property. The appellant did not itself offer any definite or positive valuation of its submerged lands. The evidence as to that value was largely that of warring experts who quoted figures endlessly in classifying various items of property as tangible or intangible in order

to increase or decrease the value of this or that item of the company's real or personal property; of local real estate experts as to the value of farm and forest lands in the neighborhood; testimony as to the cost of isolated parcels of the flooded area; as to the cost of the entire project, its capacity and earning power, and as to the physical characteristics and utility of the submerged lands. With such assistance as this evidence afforded the Commission was required to value appellant's submerged lands, and there is nothing in the record before us to enable us to say that its judgment was not fairly exercised, or that its conclusion was not correct."

(1) Thus there is not a syllable in the record to support the contention that the valuation of the submerged lands included a value attributable to the waters of the Susquehanna River flowing over said lands. It is true that there is language in the opinion of the Court of Appeals which strongly maintains the right of the State to assess the lands of the appellant at their *utility value as a power site.* We shall quote this language hereinafter. But there is nothing in the testimony or rulings of the State Tax Commission to show that any such theory was adopted by them.

(2) Likewise the record does not show that the State Tax Commission included in the valuation of the appellant's submerged lands a value attributable to the license issued by the Federal Power Commission. The exact ruling of the Commission on this point appears from its action on request for ruling No. 5 (r. 313, r. 316):

"5. Neither the Federal License nor the State franchise is the subject of assessment by the County Commissioners or State Tax Commission. So far, however, as the prayer may be held to assume that the property of the Power Company must be asses-

sed, at such value as it would have if there were no license or permission of the Federal or State Governments to use and operate the same as a power plant, the prayer is refused."

(3) Again the record does not show that the assessment of the submerged lands of the appellant was arrived at by a different method and upon a higher value than other real property owned by other taxpayers on the same tax roll or located in the same taxing district. On the contrary, the record shows that the following rulings were made by the State Tax Commission (r. 312-315):

"1. That the County Commissioners of Harford County and the State Tax Commission, in making or revising the assessment of the Susquehanna Power Company, in said County, were and are required to assess such real property as is subject to assessment and taxation in said County in the same manner as like property of individuals were or would be assessed.

"2. That in assessing the real estate of the Susquehanna Power Company in Harford County, which is subject to assessment and taxation therein, such assessment should not be made by a higher proportion of valuation than other real property on the same tax roll or located in the same taxing district, is assessed at."

And that the Commission adhered to these rulings was decided by the Court of Appeals upon a careful review of the evidence (r. 343):

"Nor can it be said as a matter of law that the assessment is erroneous. The Company itself supplied no information as to what the land actually cost it, but the Commission had before it a full itemized description of the entire project, its capacity and earning power, the testimony of the engineers for

> the County Commissioners and the Company as to its value, the amounts for which the property had formerly been assessed and some more or less meaningless testimony as to the value of farm land in the neighborhood. They were entitled to consider and weigh all of this information, and while they were not bound to accept all or any of it, at its face value, they were required in the light of it, as well as of all other pertinent facts known to them (fol. 522), to value the property according to their best judgment, and there is nothing in the record to show that they did anything less than that, or, that their valuation was unjust or oppressive."

Again, the contention that the appellant is immune from taxation as a federal instrumentality is based upon the assumption that the Susquehanna River is a navigable stream above tidewater. *There is no evidence whatsoever in this record to indicate that the Susquehanna River is or ever has been a navigable stream, above tidewater.* The Court of Appeals said (r. 329): (Italics ours.)

> "Whether the Susquehanna is in law or in fact navigable *is a question not presented by this record,* and not considered by this Court, and nothing in this opinion contained is to be construed as in any sense determining that question or determining the validity of any legislation relating thereto."

The fact that the appellant applied for and obtained a license from the Federal Power Commission on the assumption that the stream was navigable is more than counterbalanced by the fact that the appellant through its counsel obtained a patent from the State of Maryland *on the special certification that the river was not navigable* (r. 49). This certificate was a condition precedent to the obtaining of the patent inasmuch as Sec. 48 of Art. 54 of the Code (Acts 1862, Ch. 129, Sec. 39) expressly provides

that "no patent shall hereafter issue for land covered by navigable waters." In the lower courts the appellant conceded that the object of Chap. 268 of the Acts of 1908 of the General Assembly of Maryland *was to create navigation where none had previously existed.* See also the history of the Susquehanna Canal as set forth in the opinion of the Court of Appeals (r. 333-336), and see report of the War Department (H. R. Doc. 219, 58th Congress, 2nd Sess.). The case of *Havre de Grace v. Harlow,* 129 Md. 265, did not determine the navigability of the Susquehanna River above tidewater.

Again, the record is full of proofs in the shape of deeds, patents, etc., which are amply sufficient to estop the appellant from making any claim that it is not the owner of the "submerged lands" in question. Reference is made to the deed from Girard Trust Co. et al. to Frank J. Hoen (r. 29), and from Frank J. Hoen et al. to the appellant (r. 39). And see the patents obtained by counsel and assigned to the appellant under a special certification that "no part of the above land is covered by older or former surveys; *that no part of it is covered by navigable water,* and that there are no improvements whatever thereupon" (r. 49).

II.

Passing for the moment the question whether the assignments of error, in so far as they are rested upon the 14th Amendment, present any federal question, substantial or otherwise, we submit that an examination of the record will disclose that the claims now advanced were not made in the courts below nor considered by them in arriving at the judgment here sought to be reversed.

It is true that at the hearing before the State Tax Commission, a ruling was asked to the effect that:

> "Any assessment and taxation by said State or County of any part of said complete unit and project area or of said dam or pool or of the said canal, locks and other works with their profits and advantages, will deprive said company of its property against the law of the land under Art. 23 of the Declaration of Rights of Maryland, and without due process of law under the 14th Amendment of the Constitution of the United States" (r. 315)

and that this ruling was refused (r. 316). It is also true that the petition for appeal to the trial court assigned as one of the errors of law into which the State Tax Commission had fallen in making the assessment, the refusal of this, among other instructions (r. 3). It is manifest, however, that this request for a ruling did not present the question now sought to be raised by the assignments of error, but hinged upon the supposed illegality of *any* tax upon the property in question.

The theory of the appeal to the trial court as set forth in the petition was, first, that the real property in question was immune from state or county taxation as constituting an essential part of a federal instrumentality; and second, that the *valuation was excessive* because of the inclusion therein of the value of (a) federal and state franchises, (b) property outside of the State of Maryland, and (c) the waters of the Susquehanna River (r. 3). Nothing was said about the 14th Amendment. The opinion of the Court of Appeals is entirely barren of any suggestion that reliance was there placed upon the protection of the Federal Constitution except insofar as the doctrine of the immunity of federal instrumentalities

from state taxation was asserted. See statement by OFFUTT, J., of the questions to be decided (r. 329, 336).

As we understand it, the appellant *in its assignment of errors* does not attempt to maintain the position that any taxation of its submerged lands is contrary to the 14th Amendment, but merely complains of the improper inclusion of certain elements of value in the assessment placed upon those lands, and of the asserted inequality in the assessment as compared with that placed on other real estate within the same taxing district. While it was contended below that these elements of value were improperly included in the assessment of the appellant's submerged land, and that the method of assessment was erroneous and unjust, the contention does not appear to have been based upon any claim that the inclusion of these elements or the method of valuation pursued involved any violation of the 14th Amendment. (See Request for Ruling Nos. 3, 4, and 5) (r. 314-315).

Accordingly it is respectfully submitted that this Court will not consider the contentions now sought to be presented by the assignments of error insofar as these contentions are based upon the 14th Amendment, for the reason that these contentions were not presented to and considered by the lower courts.

Howard v. Fleming, 191 U. S. 126.
Home Ins. Co. v. Dick, 281 U. S. 397.

III.

The asserted federal questions based upon the 14th Amendment are wholly unsubstantial.

(1) If it be true that the State Tax Commission in valuing the submerged lands of the appellant, include a

value attributable to the waters of the Susquehanna River, it is perfectly clear that there is nothing in the Federal Constitution to prevent. That the submerged lands in question are property, taxable as such to the appellant as owner is clear from the following cases:

Browne v. Kennedy, 5 H. & J. (Md.) 196.
Central R. R. of N. J. v. Jersey City, 209 U. S. 473.
Leary v. Jersey City, 248 U. S. 328.

And there is a wealth of authority to the same effect.

Cooley, Taxation, 4th Ed., Vol. II, Sec. 449.

Indeed, Mr. Charles McHenry Howard, who represented the appellant in this litigation until the filing of the present appeal, made the following statement in argument before the State Tax Commission (r. 220):

> "What were the County Commissioners of Harford County called upon to do in the assessment proceedings that this is an appeal from? They were called upon to put a taxable value on certain tangible assets that we have. They were called upon to value and appraise a dam, a perfectly definite, a concrete object, as they say, without intending a pun —they were called upon to value a certain amount of land which forms the bed of our present pool, they were called upon to value a certain amount of outlying land that lies around the pool, some of which may be needed for the purposes of the pool, they were called upon to value these transmission lines— that is such part of all of this that was in Harford County—and they were called upon to value these structures, the power house that is built upon the dam, as well as the dam itself, as a structure. Now, those are tangible physical objects, all of them. In

valuing them, the County Commissioners and this Board is, of course, *entitled to take into consideration their utility for all kinds of purposes.*"

In their statement as to jurisdiction, present counsel for the appellant make the contention that the appellant does not own the submerged lands in question, and that the tax is therefore a tax upon the flow of a navigable stream which is not taxable in character. As has been seen, this contention is entirely unsupported by the record.

On the question of ownership the judgment of the Court of Appeals of Maryland must necessarily be conclusive. That Court said (r. 336):

> "That contention rests upon two fallacies, one, that the submerged land cannot be treated as property separate and apart from the water which flows over it, the other that the land and water together constitute a 'highway' and as such cannot be taxed.
>
> "Manifestly the land can be considered as a thing separate and distinct from the water over it, just as a bowl containing milk may be considered as separate and distinct from its contents, and both the bowl and the milk may be separately owned. That the bed of a navigable stream above tidewater may be the subject of private ownership was decided in this State as early as *Browne v. Kennedy*, 5 H. & J. 195."

The case of *U. S. v. Chandler-Dunbar Co.*, 229 U. S. 53, upon which appellant chiefly relies is clearly inapplicable. That case held that the United States did not have to compensate the company for loss of water power rights arising from the acquisition by the Secretary of War of submerged lands lying below a navigable stream. *The*

right of the company to compensation for the submerged lands themselves was not questioned, but it was held that *the right to develop water power* in a navigable stream being wholly subject to the will of Congress, was not a right of private property protected by the Fifth Amendment.

Indeed the case upon analysis is an authority which supports the action of the State Tax Commission in this case for the court expressly recognizes that the value of the company's property was to be determined *according to its utility value* (at pp. 78-79). See also the following language from the opinion of Mr. Justice LURTON (p. 69):

> "Whatever substantial private property rights exist in the flow of the stream must come from some right which that company has to construct and maintain such works in the river, such as dams, walls, dykes, etc., essential to the utilization of the power of the stream for commercial purposes."

The contention made by present counsel for the appellant was pointedly rejected by the Court of Appeals in the following language (r. 341):

> "The real value of these lands lies in the fact that they form a natural basis through which a large river flows and within a few miles falls nearly one hundred feet, and that by the erection of a dam across the only outlet from that basin, the waters of that river may be impounded so as to generate nearly six hundred thousand horse power. To say that its utility for that purpose adds nothing to the value of the land, or, what in effect is the same thing to say that the value created by that utility cannot be taxed because such a tax would be imposed upon flowing water simply ignores the facts."

(2) Even if it were conceded that the State Tax Commission included in the assessment of the appellant's property a value attributable to a federal license, there is nothing in the Constitution of the United States to prevent. Railroad property is assessed at its utility for railroad purposes, notwithstanding that utility depends upon the possession of a federal franchise.

Thompson v. Union Pacific Railroad Co., 9 Wall. 579.
Union Pacific Railroad Co. v. Peniston, 18 Wall. 5.
Central Pacific Railroad v. State of California, 162 U. S. 91.

The same priciple has been applied in cases even more closely analagous.

Balto. Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 375—Affirming 97 Md. 97.
Van Allen v. Assessors, 3 Wall. 573.
Educational Films Corp. v. Ward, decided Jan. 12, 1931.

The provision of Section 813 of the Federal Water Power Act, U. S. C. Title 16, Section 813, that "no value shall be claimed or allowed for the rights granted by the Commission, or by this chapter" manifestly relates to valuation for rate-making purposes, and surely does not prohibit the valuation of the property of the appellant as a going concern.

(3) Even more unsubstantial is the contention that the State Tax Commission violated the Federal Constitution by assessing the real property of the appellant by a dif-

ferent method and upon a higher value than other real property on the same tax roll, although located in the same taxing district. That no Federal question is involved apart from proof of intentional and systematic inequality of assessment has been repeatedly laid down by this Court.

Sunday Lake Iron Co. v. Wakefield, 247 U. S. 350.
Southern R. R. Co. v. Watts, 260 U. S. 521.
Chicago Great Western Railway Co. v. Kendall, 266 U. S. 94.

IV.

The claim of the appellant to immunity from state and county taxation is based solely on its contention that it is a federal agency and instrumentality. This contention in turn is based on the supposed application to the appellant's project of certain provisions of the Federal Water Power Act, 16 U. S. C., c. 12, specifically referred to in the appellant's statement as to jurisdiction.

This claim was made in the lower courts and disposed of on the assumption that the legislation in question was applicable to the appellant's project. But it is submitted that before this court will entertain an appeal based on any such contention, the fundamental fact must be established that the project in question is actually included within the ambit of the act. And this must depend in the last analysis upon whether the Susquehanna is navigable above tidewater.

Unless this Court is prepared to assume without proof the fact that the Susquehanna River is navigable above

tidewater, the bottom drops out of the appellant's claim to immunity. For manifestly the appellant cannot claim to be a federal agency unless it is performing a legitimate function of the Federal Government, and equally manifest is it, that the placing of an obstruction in a non-navigable stream for the purpose of utilizing the water power thus developed, is not a legitimate function of the Federal Government. The Attorney General of the United States has so held. See: *Opinion in re Application for License for Power Project near Cumberland Falls, Ky.* (July 1, 1930), and *Opinion in re Application for License by Appalachian Power Co. for Water Power Project in New River, Va.* (September 22, 1930). As pointed out in these opinions, the provisions of the Federal Water Power Act upon which the appellant places reliance are not applicable to obstructions placed in non-navigable streams, even though those streams are navigable at some point farther down in their course. As was noted by the Attorney General, this construction of the act is necessary in order to avoid raising questions as to whether Congress has not attempted to usurp the powers reserved to the States under the 10th Amendment.

On the other hand, if this court should conclude that the appellant, by accepting the license issued by the Federal Power Commission, has thereby become subject to its terms and to all the provisions of the Federal Water Power Act, it would nevertheless be quite clear that the appellant would not thereby become a federal agency or instrumentality, immune from taxation by the States. Otherwise the voluntary act of the appellant in submitting to the jurisdiction of the Federal Power Commission would immediately present the serious constitutional

questions which this court refused to entertain in *New Jersey v. Sargent*, 269 U. S. 328, even at the earnest request of a State.

Thus we find the appellant upon the horns of a dilemma. To assume the fact that its project has been erected in navigable waters, is to assume a fact for the purpose of invalidating the act of a State Legislature, through its agency, the State Tax Commission, which this court has consistently declined to do.

Wampler v. LeCompte, decided Dec. 8, 1930.
O'Gorman & Young v. Hartford, etc., Ins. Co., decided Jan. 5, 1931.

On the other hand, to assume the non-navigability of the stream is to eliminate the possibility of any such claim as is here made by the appellant, unless the Federal Water Power Act is to be construed in a manner plainly in conflict with the 10th Amendment, which again this Court will not do.

Russian Volunteer Fleet v. United States, decided Feb. 24, 1931.

Finally, it is abundantly evident that even if it be assumed that the Susquehanna River is navigable above tidewater, and that all of the provisions of the Federal Water Power Act are applicable to that project, and that the act so applied is a valid exercise of the power of Congress in the interests of navigation, (as to which see the argument on behalf of the State of New Jersey in *New Jersey v. Sargent* (supra)), nevertheless, the property of the appellant is not immune from state or county taxation. Article 31 of the very license upon which the ap-

pellant relies contains a complete refutation of its claim. It is therein provided that none of the project property will be "voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission, Provided, That a mortgage or trust deed or judicial sales made thereunder, *or tax sales,* shall not be deemed voluntary transfers within the meaning of this Article" (r. 310). And this provision of the license is taken directly from Section 801 of the Federal Water Power Act (16 U. S. C., c. 12). *So that any immunity created by the provisions of the Act has clearly been waived by Congress.*

Moreover since the passage of the Transportation Act of 1920, the railroads have been subject to recapture of excess earnings, *Dayton Goose Creek RR. v. U. S.*, 263 U. S. 456, and to other provisions equally as drastic as any provisions in the Federal Water Power Act, yet it will not be contended that the real property of railroad companies is immune from State taxation. Such a contention would be regarded as frivolous in the light of the decisions of this Court in,

Thompson v. Union Pacific RR. Co., 9 Wall. 579;
Union Pacific RR. Co. v. Peniston, 18 Wall. 5.
Central Pacific RR. v. California, 162 U. S. 91.

And there are other decisions of this Court which show that the contention advanced on this appeal that the appellant's property is immune from taxation, is equally frivolous.

Baltimore Shipbuilding & Dry Dock Co. v. Balto., 195 U. S. 375, Affirming 97 Md. 97.

Gromer v. Standard Dredging Co., 224 U. S. 362.
Fidelity & Deposit Co. v. Pennsylvania, 240 U. S. 319.
Choctaw O. & G. R. Co. v. Mackey, 256 U. S. 531.
Metcalf v. Mitchell, 269 U. S. 514.
Alward v. Johnson, Decided Feb. 24, 1931.

CONCLUSION.

There can be no doubt of the power of this Court to dismiss an appeal where the points relied upon are plainly frivolous or without any color of merit.

Corrigan v. Buckley, 271 U. S. 323.
Hannis Dist. Co. v. Baltimore, 216 U. S. 285.

Respectfully submitted,

WM. P. LANE, JR.,
Attorney General of the State of Maryland,

WM. L. MARBURY, JR.,
Assistant Attorney General of the State of Maryland,

TYDINGS, LEVY & ARCHER,
CHARLES H. MACNABB,
Counsel for Appellee.